

North Dakota Preference Laws

The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. In North Dakota, the preference given to a resident North Dakota bidder will be equal to the preference given or required by the state of the nonresident bidder (ref. N.D.C.C. § 44-08-01). This preference, commonly called a "reciprocal preference" must be applied when evaluating the costs of bids or proposals received from nonresident (out-of-state) vendors. A "resident" North Dakota bidder, offeror, seller, or contractor is one who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded (ref. N.D.C.C. § 44-08-02). This preference law applies to state entities and the governing body of any political subdivision when purchasing any goods, equipment, professional services, and building or repairs.

When evaluating bids or proposals, you must determine whether the nonresident vendor's state of residence has a preference law for vendors resident in that state. If the nonresident vendor's state has a preference law, the cost proposal of the nonresident vendor will be increased by the same percentage of preference given to vendors resident in that state.

For example, the state laws of a nonresident bidder require a 5% preference for vendors resident in that state, so the ND procurement officer must increase that bidder's cost proposal by 5% before evaluating it.

No reciprocal preference is applied to the price offered by a nonresident bidder whose state of residence has no preference laws or a reciprocal preference law. If all bids or proposals received are from nonresident vendors, no preference is applied.

A list of state preference laws is available at:

<http://egov.oregon.gov/DAS/PFSS/SPO/reciprocal.shtml>

North Dakota also has preference laws related to particular commodities and services:

- Coal. When purchasing coal, state agencies and institutions must comply N.D.C.C. § 8-05-02.1 which describes how to apply preference for bidders supplying coal mined in North Dakota.
- Highway Construction Stakes. Contracts for highway construction stakes must be awarded to North Dakota work activity centers for the developmentally disabled, unless no work activity center bids on the contract. See N.D.C.C. § 25-16.2-02.
- Printing. If you are soliciting printing, state law requires that printing be done in North Dakota whenever practicable. If you solicit quotes for printing from nonresident printers, document the reason. See N.D.C.C. § 46-02-15 and N.D.A.C. 4-12-16-01.
- Soybean-based ink. State agencies and institutions of Higher Education are encouraged to use soybean-based ink when purchasing newsprint printing (ref. N.D.C.C. 54-44.4-07).

Contact your agency's procurement section or the OMB State Procurement Office at 701-328-1726 for assistance in applying state preference laws.